

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

C O N F I D E N T I A L STATE 096198

E.O. 11652: GDS

TAGS: EFIN

SUBJECT: US TAX TREATY NEGOTIATIONS

REF: MANILA 4439

1. US AND R.O.P. PANELS MET ON MARCH 22-26 AND MARCH 31, 1976, AND SUBSTANTIALLY COMPLETED DISCUSSIONS CONCERNING THE PROPOSED TAX TREATY. A FINAL DRAFT WAS PREPARED FOR INTERNAL REVIEW WITHIN BOTH GOVERNMENTS PREPARATORY TO SIGNATURE. NO PRESS RELEASES WERE ISSUED. A COPY IS BEING AIR POUCHED. THE SALIENT PROVISIONS FOLLOW:

2. ARTICLE 2 (DEFINITIONS). NO NO CHANGE WAS MADE IN THE GEOGRAPHICAL DEFINITION OF THE TERM "PHILIPPINES."

3. ARTICLE 8 (BUSINESS PROFITS). THE TERM "BUSINESS PROFITS" WAS SUBSTITUTED FOR THE TERM "INDUSTRIAL OR COMMERCIAL PROFITS." UNDER THE DEFINITION IN NEW
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PARAGRAPH (6), BUSINESS PROFITS SPECIFICALLY INCLUDE

INCOME FROM THE RENTAL OF TANGIBLE PERSONAL (MOVABLE) PROPERTY.

4. ARTICLE 9 (SHIPPING AND AIR TRANSPORT). THE PHILIPPINE PROPOSAL, WITH SLIGHT MODIFICATIONS, WAS ACCEPTED.

5. ARTICLE 11 (DIVIDENDS). THE TAXES IMPOSED ON DIVIDENDS ARE LIMITED TO 25 PERCENT ON PORTFOLIO DIVIDENDS AND 20 PERCENT ON DIRECT INVESTMENT DIVIDENDS. THE 20 PERCENT RATE WILL ALSO APPLY TO BRANCH PROFITS.

6. ARTICLE II (INTEREST). THE TAXES IMPOSED ON INTEREST CONTINUE TO BE LIMITED TO 15 PERCENT.

7. ARTICLE 13 (ROYALTIES). THE US RATE OF TAX IS LIMITED TO 15 PERCENT. THE PHILIPPINE RATE OF TAX IS LIMITED TO THE LEAST OF 25 PERCENT (IN GENERAL), 15 PERCENT (IF PAID BY A CORPORATION REGISTERED WITH THE PHILIPPINE BOARD OF INVESTMENT), AND THE LOWEST RATE IMPOSED ON ROYALTIES OF THE SAME KIND PAID UNDER SIMILAR CIRCUMSTANCES TO A RESIDENT OF A THIRD STATE. THE LOWEST PHILIPPINE RATE PROVISION WILL NOT APPLY TO FILM ROYALTIES UNTIL JANUARY 1, 1979. RENTALS OF TANGIBLE PERSONAL PROPERTY ARE DEFINED AS BUSINESS PROFITS, NOT ROYALTIES.

8. ARTICLE 14 (CAPITAL GAINS). THE ARTICLE WAS REVISED IN FORM. THE 183-DAY RULE IN PARAGRAPH (4) WAS DELETED.

9. ARTICLE 15 (INDEPENDENT PERSONAL SERVICES). EITHER STATE MAY TAX A RESIDENT OF THE OTHER STATE ON INCOME FROM PERFORMING PERSONAL SERVICES IN THE FIRST STATE IF THE INDIVIDUAL HAS A FIXED BASE REGULARLY AVAILABLE IN THAT FIRST STATE, STAYS THERE LONGER THAN 90 DAYS OR RECEIVES MORE THAN DOLS 10,000 FOR HIS SERVICES THERE. THE TAX IS TO BE IMPOSED ON NET INCOME.

10. ARTICLE 24. (NONDISCRIMINATION). THE ARTICLE NOW APPLIES TO TAXES OF EVERY KIND IMPOSED AT THE NATIONAL, CONFIDENTIAL

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STATE, OR LOCAL LEVEL. THE PHILIPPINES CAN GRANT INCENTIVES, SIMILAR TO THOSE LISTED IN PARAGRAPH (4) OF THE EARLIER DRAFT, WHICH ARE LIMITED TO ITS NATIONALS. SUCH INCENTIVES MUST EXIST ON THE DATE OF SIGNATURE OF THE CONVENTION AND MAY NOT BE SUBSTANTIALLY CHANGED IN THE FUTURE. SECTION 9 OF THE INVESTMENT INCENTIVES PROGRAM FOR THE TOURISM INDUSTRY (R.P. NO. 535) WAS ADDED TO THE LIST IN PARAGRAPH (4) OF THE EARLIER DRAFT.

11. ARTICLE 25 (MUTUAL AGREEMENT PROCEDURE). THE PHILIPPINES AGREED TO ISSUE TAX CREDIT CERTIFICATES IF, IN CONNECTION WITH AN ALLOCATION UNDER SECTION 482, A CLAIM FOR REFUND OF PHILIPPINE TAX IS MADE AFTER THE 2-YEAR PERIOD PROVIDED IN ITS INTERNAL LAW.

12. FYI: A COPY OF MATERIALS GIVEN TO MR. TOLEDO FOR SECRETARY VIRATA IN CONNECTION WITH THE ESTATE OF LINNIE HODGES IS BEING AIR POUCHED WITH THE TREATY. ALTHOUGH THIS MATTER IS NOT AFFECTED BY THE PROPOSED INCOME TAX TREATY, TREASURY WANTS TO RESOLVE IT BEFORE SIGNING THE TREATY. KISSINGER

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